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IN THE

# Supreme Court of the United States

October Term, 1978

No. 78-342

AURELIO FREGOSO JARA,

*Petitioner,*

*vs.*

MUNICIPAL COURT OF SAN ANTONIO JUDICIAL DISTRICT,

*Respondent.*

THE COUNTY OF LOS ANGELES and LE ROY BELL,

*Real Parties in Interest.*

**Petition for a Writ of Certiorari to the Supreme Court of the State of California.**

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# Supreme Court of the United States

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No. .....

AURELIO FREGOSO JARA,

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*vs.*

MUNICIPAL COURT OF SAN ANTONIO JUDICIAL DISTRICT,

*Respondent.*

THE COUNTY OF LOS ANGELES and LE ROY BELL,

*Real Parties in Interest.*

**Petition for a Writ of Certiorari to the Supreme Court of the State of California.**

Aurelio Fregoso Jara (the "Petitioner") petitions for a writ of certiorari to review the opinion and the judgment of the Supreme Court of the State of California which issued remittitur on June 5, 1978.

**Opinions Below.**

The opinion of the California Supreme Court (Appendix A, *infra*) is reported at 21 Cal. 3d 181. The opinion of the State Court of Appeal (Appendix B, *infra*) is not reported. The decision of the state trial court (Appendix C, entitled "Minute Order" denying petition for writ of mandate), its findings of fact and conclusions of law (Appendix D, *infra*) and its judgment (Appendix E, *infra*) are not reported.

**Jurisdiction.**

The initial opinion of the California Supreme Court was filed on May 2, 1978. That court's order became final on June 1, 1978 and its remittitur was issued on June 5, 1978. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

**Question Presented.**

When an indigent non-English-speaking defendant is compelled to defend the threatened loss of personal property in civil litigation, do the due process and equal protection clauses require the appointment of a qualified court interpreter to enable said defendant to understand the proceedings and testimony during the course of the trial?

**Constitutional Provisions Involved.**

The Fourteenth Amendment to the United States Constitution provides in pertinent part: ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

**Statement of the Case.**

One of the constitutional concepts that has been repeatedly upheld and consistently expanded has been our modern notion of due process of law. It is now a fundamental cornerstone of our judicial system that no person may be deprived of any significant property interest without first being accorded his/her day in court. We take pride in our judicial process, which purportedly affords all individuals, regardless of economic, social, racial or sexual status, the same basic



and fair opportunity to represent and defend themselves in our courts. But for one group of citizens, indigent non-English-speaking defendants in civil actions, in many states the judicial process presents only the appearance of fairness, not the reality. These defendants are haled into court and threatened with the loss of their property by proceedings they cannot begin to understand. The only way for a non-English-speaking defendant to participate meaningfully in the judicial process is to secure the services of a qualified interpreter. For the indigent defendant a qualified interpreter is not financially available. The question presented herein is whether the Constitution requires that an interpreter be appointed for such persons.

While it has become recognized that an interpreter is constitutionally required for criminal defendants *United States ex rel. Negron v. New York,* 434 F.2d 386 (2nd Cir. 1970) the issue remains unresolved for defendants in civil actions. As pointed out by Justice Tobriner in his dissent to the opinion below:

> "At issue here is the question whether our judicial system will allow an indigent defendant in a civil case who does not speak nor understand the English language to be deprived of his interest in his property (including future earnings), which he may desperately need in order to survive, in a proceeding that he does not, and, because of his indigency, cannot hope to understand. I believe this issue raises basic constitutional and human questions that the majority does not begin to confront." (21 Cal.3d at 187.)

This very predicament is the situation presented by the instant case. The petitioner herein who speaks

only Spanish, was sued in the Municipal Court of the State of California in an action seeking property damages in excess of one thousand dollars. Petitioner, represented by a non-Spanish-speaking attorney employed by a publicly funded legal aid office, filed a motion seeking the appointment of a qualified court interpreter for assistance during the trial. The motion was supported by petitioner's affidavit attesting that he did not speak or understand English, that he was indigent and that he did not have access to a qualified court interpreter. When the motion was denied, petitioner filed a writ of mandate in the Superior Court of California, County of Los Angeles.

The Superior Court denied the writ, but the Court of Appeal reversed, holding that petitioner was deprived of a meaningful opportunity to be heard because he was not able to understand any of the oral proceedings, including "the testimony of the witnesses against him, the statement of the judge, of opposing counsel and his own counsel if such counsel does not speak or understand Spanish." (Appendix B, p. 35.)

The California Supreme Court, however, in a 4-3 opinion, concluded that there was no constitutional violation because the absence of an interpreter "has not been shown to constitute a substantial burden." (21 Cal.3d at p. 184.)



## REASONS FOR GRANTING THE WRIT.

### 1. The Decision of the California Supreme Court Is Inconsistent With the Modern Notion of Due Process as Expressed by the United States Supreme Court.

Although this Court has not yet had the opportunity to rule on the specific issue presented by the instant case, the implications from similar cases strongly suggest that the unavailability of a qualified court interpreter to a non-English-speaking defendant results in such a fundamental disadvantage as to constitute a deprivation of the constitutional right to due process of law. As far back as *Mullane v. Central Hanover Bank & Tr. Co.*, 330 U.S. 306, 314 (1950) this Court noted that the "fundamental requisite of due process is the opportunity to be heard." The Court stressed that this opportunity must be realistic and that "process which is a mere gesture is not due process." *Id.* at p. 315. Even then the Court was cognizant of the necessity to tailor the fundamental judicial requisites to meet the requirement of individual circumstances.

Twenty years later this Court reiterated a paramount concern regarding the integrity of the judicial process:

> "due process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a *meaningful* opportunity to be heard." (Emphasis added.) *Boddie v. Connecticut,* 401 U.S. 371, 377 (1970).

This Court noted with particular concern the constitutional rights of a defendant in a civil action. A

defendant who is not afforded a meaningful opportunity to be heard is in essence deprived of access to the Court:

> "But the successful invocation of this governmental power by plaintiffs has often created serious problems for defendants' rights. For at that point, the judicial proceeding becomes the only effective means of resolving the dispute at hand and denial of a defendant's full access to that process raises grave problems for its legitimacy." *Id.* at p. 376.

The instant case involves an indigent individual who is involuntarily and without choice forced to adjudicate certain property rights through the judicial process. The petitioner is forced to participate in a process that he is unable to understand due to his inability to speak or understand English. Because of his indigency petitioner is unable to pay for the services of a qualified court interpreter. Petitioner's sole alternative is a voluntary qualified interpreter, but according to his affidavit, none were available. Thus this petitioner presents the circumstance of a non-English-speaking defendant who has no available alternative that would enable him to understand the judicial process taking place or even to participate in the process.

The constitutional entitlement to an interpreter appears to be settled with regard to criminal defendants. *United States ex rel. Negron v. State of New York, supra,* 434 F.2d 386 (2nd Cir., 1970). Historically, criminal actions have been distinguished from civil actions. One of the reasons for this distinction is that in view of the importance of life and personal liberty, a greater burden of proof for conviction is placed on the State. However, notwithstanding a different bur-



den of proof, both civil and criminal actions must comply with the requirements of due process. In each type of action, it is equally important that the process be fair. So long as a constitutionally protected interest is at stake, the constitutional protection of due process of law applies regardless whether the interest is life, liberty or property. While there exist some legitimate distinctions between civil and criminal actions, these distinctions should not be interpreted to mean that civil actions are entitled to a lesser degree of due process. Quite to the contrary, our notion of due process is one that inherently does not lend itself to being measured by quantity or degrees. Due process must, on the one hand, be flexible to meet the needs of diverse situations, *i.e.,* "appropriate to the nature of the case," *Mullane v. Central Hanover Tr. Co., supra,* at 313. Nevertheless, the critical and overriding issue is whether one is entitled to the basic fairness that lies at the heart of the due process clause.

A review of cases presenting circumstances similar to that of petitioner reveals a common attitude that is inconsistent with the opinion of the California Supreme Court. In *United States ex rel. Negron v. New York, supra,* the Second Circuit Court of Appeals was faced with the situation of a non-English-speaking criminal defendant who was forced to defend a murder charge without the service of an interpreter. Neither his attorney nor the judge could speak Spanish and twelve of the fourteen witnesses testified in English. In reversing the conviction the court held that "the right that was denied Negron seems to us even more consequential than the right of confrontation" [explicitly granted only to criminal defendants]. The rights involved "[c]onsiderations of fairness, the integrity of

the fact-finding process, and the potency of our adversary system of justice. . . ." *Id.*, at p. 389. The court concluded that due to the absence of an interpreter, the trial lacked the "basic and fundamental fairness" required by the due process clause of the Fourteenth Amendment.

The majority of the California Supreme Court concluded that the absence of an interpreter does not constitute a "substantial burden" due to the fact that the courtroom proceedings are "controlled by counsel." 21 Cal.3d at 184. However the mere presence of counsel has been held to be inadequate to comply with the requirements of due process where there are doubts regarding a criminal defendant's competence to stand trial. *Pate v. Robinson,* 383 U.S. 375 (1965). This Court has stated that the

> "test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him." *Dusky v. United States,* 362 U.S. 402 (1960).

The situation of a non-English-speaking defendant is almost identical to that of a criminal defendant who is not mentally competent. In each case, the judicial process has the appearance and trappings of a fair trial to the outside observer, but in each case the defendant is incapable of understanding or communicating with counsel, the judge or witnesses and lacks any minimal comprehension of the proceedings taking place.

More recently this Court has spoken in defense of incarcerated individuals who were deprived of access to the courts by the absence of law libraries and



other forms of legal assistance. *Bounds v. Smith,* .... U.S. ...., 97 S.Ct. 1491 (1977). The Court refused to be satisfied with the argument that access to the Courts, although superficial, was available and that prisoners could draft their own petition for habeas corpus or civil rights complaint. This Court insisted that access be adequate, effective and meaningful.

The absence of an interpreter was found by the California Supreme Court not to constitute a substantial burden largely on the speculation that alternatives to a qualified interpreter existed in family members, friends or neighbors. While such alternatives may possibly exist in the abstract, it is just as reasonable to conclude that these alternatives do not exist. Moreover in view of petitioner's affidavit and the uncontested record on this point, it is clear that no alternative existed in this particular situation.

While consideration of alternatives to an interpreter is appropriate, those alternatives must be realistic and certainly not the product of mere speculation. In this vein, the lower court's reliance on *United States v. Kras,* 409 U.S. 434 (1973), and *Ortwein v. Schwab,* 410 U.S. 656 (1973), is misplaced. In *Kras,* this Court found no Constitutional infirmity in requiring indigents to pay filing fees to secure discharges in bankruptcy because bankruptcy is only a statutorily-created remedy and is not the only method available to a debtor for the adjustment of his legal relationship with his creditors, 409 U.S. at 445. In *Ortwein,* this Court held that a filing fee required for judicial review of an administrative decision did not violate due process in that all appellants were granted, as a matter of right, an administrative fair hearing to present their claims, 410 U.S. at 659-660.

Thus in each of these circumstances, specific and concrete alternatives existed to the indigents. In *Bounds v. Smith, supra,* this Court refused to accept the speculation that prisoners could realistically draft legal documents with the possible assistance of "writ writers" or jail house lawyers. To the petitioner, the purported alternatives suggested by the lower court are as speculative and meaningless as his participation in a process that is utterly incomprehensible to him. The lower court's distortion of this Court's interpretation of our modern notion of due process of law compels the granting of certiorari.

**2. Refusal to Provide a Court Interpreter to a Non-English-Speaking Defendant Raises Important Equal Protection Questions.**

Respondent's refusal to provide petitioner with an interpreter also raises important questions concerning the scope of the equal protection clause of the Fourteenth Amendment. Respondent has singled out one helpless group, the class of indigent non-English speaking people, as the only Californians to be denied their full day in court.

This Court has repeatedly applied a strict scrutiny standard to state classifications that impinge on a fundamental interest or involve a suspect classification. Under this rigid standard, the state bears the burden of establishing that it has a compelling interest which justified the law and that the distinctions drawn by the law are necessary to further its purpose. *Dunn v. Blumstein,* 405 U.S. 330, 342-343 (1972).

The denial of court interpreters to indigent non-English-speaking defendants must be evaluated under the strict scrutiny test because it infringes on a fundamental right and involves a suspect classification. As explained above, petitioner's right to meaningful access to court has been denied. The right to be heard in court to defend one's property is a right of fundamental dimension; in order to justify granting the right to one group while denying it to another, the state must show a compelling state interest.



In addition, denying the right to an interpreter involves a suspect classification: this Court has repeatedly condemned state-imposed discrimination based upon ancestry, whether racial or national. See, *e.g., Hernandez v. Texas,* 347 U.S. 475 (1954); *Hirabayashi v. United States,* 320 U.S. 81, 100 (1943). Respondent's refusal to provide an interpreter forces non-English speaking people to suffer the humiliation of judicial proceedings which they cannot understand but which may deprive them of their property.

The fact that only the most indigent of the non-English speaking population is affected makes the discrimination all the more questionable. While this Court has not ruled that poverty is in itself a suspect classification, it has struck down wealth discrimination in a number of cases. In each of those cases,

> "The individuals, or groups of individuals, who constitute the class discriminated against . . . shared two distinguishing characteristics: because of their impecunity they were completely unable to pay for some desired benefit, and as a consequence, they sustained an absolute deprivation of a meaningful opportunity to enjoy that benefit."

*San Antonio School District v. Rodriguez,* 411 U.S. 1, 20 (1973). *Griffin v. Illinois,* 351 U.S. 12 (1956) presents a good example of this principle. In *Griffin,*

this Court held that when a state grants criminal defendants a right to appeal their convictions and an appeal requires a stenographic transcript, indigent criminal appellants are denied their rights to due process and equal protection because of their inability to afford such a transcript. As the *Rodriguez* Court put it, the criminal defendant in *Griffin* was completely unable to pay for a desired benefit—the opportunity to appeal his conviction—and accordingly sustained, an absolute deprivation of that benefit.

In the present case, because he is poor and cannot speak English, petitioner is completely unable to pay for an important benefit—the right to defend his property interests in a proceeding he can understand. As a result, he is absolutely unable to obtain that benefit. Even if it were theoretically possible for some indigent non-English-speaking defendants to secure the services of a bilingual friend or relative to interpret for them in court, the record has established that *this* non-English-speaking defendant has no such alternative, and is thus absolutely deprived of an important benefit.

Thus, because of the fundamental interest impinged upon by respondent's refusal to provide an interpreter and the involvement of discrimination against petitioner because he is a poor and non-English-speaking, strict scrutiny must be invoked.

Judged by the compelling state interest test or even by the standards of the traditional rational basis review, the refusal to provide an interpreter cannot be justified. Although the refusal may save government some money, this Court has held that financial savings cannot justify an otherwise unconstitutional state action. *Shapiro v. Thompson*, 394 U.S. 618 (1969). Nor can respondent's refusal be justified as furthering the goal of preserving a single-language judicial system. That system is in no way threatened by allowing proceedings conducted wholly in English to be understood by all participants. It must be concluded that no important state interests justify the discrimination herein based on petitioner's indigency and inability to speak English, and that the refusal to provide petitioner with an interpreter violates the equal protection clause.



**Conclusion.**

The decision below, although on an issue not heretofore addressed by this Court, casts a severe blow to this Court's opinions on due process and equal protection. For the reasons expressed above, a writ of certiorari should issue to review the decision of the California Supreme Court.

Respectfully submitted,

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## APPENDIX A.

[L.A. No. 30788. May 2, 1978.]

Aurelio Fregoso Jara, Plaintiff and Appellant v. The Municipal Court for the San Antonio Judicial District of Los Angeles County, Defendant and Respondent; County of Los Angeles et al., Real Parties in Interest and Respondents.

COUNSEL

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John H. Larson, County Counsel, David B. Kelsey and Jeffrey M. Hausman, Deputy County Counsel, for Defendant and Respondent and for Real Parties in Interest and Respondent.

OPINION

CLARK, J.—Appeal from judgment denying petition for writ of mandate or prohibition to compel respondent municipal court to appoint an interpreter in a civil action. We affirm the judgment.

A property damage action arising from an automobile accident was filed against appellant in the municipal court. Represented by a staff attorney of the Southeast Legal Aid Center founded under the Office of Economic Opportunity, he filed an answer and cross-complaint. Alleging indigency and inability to speak or understand English, appellant moved the court to appoint an interpreter skilled in English and Spanish, without expense to himself. The court denied the motion.

Appellant then commenced the instant writ proceeding in the superior court. That court concluded appellant does not have a common law right to an interpreter,

and that refusal to appoint an interpreter for an indigent litigant in a civil case does not constitute abuse of discretion or denial of either due process or equal protection of the law.

## STATUTORY BASIS FOR APPOINTMENT

No statutory basis exists for appointment of an interpreter at public expense to assist non-English speaking litigants. Evidence Code section 752 provides for court appointment of an interpreter for a *witness*. An interpreter for a witness performs a different and much less burdensome function than an interpreter for a party. The witness' interpreter is essential to permit the witness to understand questions asked and to inform counsel, judge and jury of the witness' responses. By contrast, an interpreter for the litigant would interpret communications between the litigant and his counsel and all oral proceedings at trial including testimony by English-speaking witnesses, and communications of attorneys, judge, and jurors.

## INHERENT POWER OF THE COURT

A trial court has inherent power to waive its filing fees to accommodate indigents in civil litigation. (*Martin v. Superior Court* (1971) 176 Cal. 289, 290 et seq. [168 P. 35]; *Earls v. Superior Court* (1971) 6 Cal.3d 109, 113 [98 Cal.Rptr. 302, 490 P.2d 814].) Appellate courts also have inherent power to waive filing fees for indigent civil litigants. (*Ferguson v. Keays* (1971) 4 Cal.3d 649, 653 et seq. [94 Cal.Rptr. 398, 484 P.2d 70].) However, appellant does not seek waiver of ordinary court costs or fees. Rather, he seeks retention of an interpreter to be paid for by the county or some other public agency.



In *Ferguson,* we did not reach the question whether indigents must be given funds to pay third party charges in civil cases. (4 Cal.3d at p. 654.) Subsequent cases have refused to require counties to provide indigent civil litigants with counsel or with appellate transcripts. (*Leslie v. Roe* (1974) 41 Cal.App.3d 104, 107 [166 Cal.Rptr. 386]; *Hunt v. Hackett* (1973) 36 Cal.App.3d 134, 137-138 [111 Cal.Rptr. 456].)

Providing for appointed counsel for indigent prisoner defendants in *Payne v. Superior Court* (1976) 17 Cal.3d 908 [132 Cal.Rptr. 405, 553 P.2d 565], this court expressly pointed out that we do not possess the power to require expenditure of public funds for the purpose. Rather, attorneys are expected to serve gratuitously as part of their public responsibilities. (17 Cal.3d at p. 920, fn. 6.)

Determining whether indigent civil litigants should be provided interpreters at public expense, we first weigh the problem by considering the alternatives open to the litigants. In contemporary urban society, the non-English speaking individual has access to a variety of sources for language assistance. Members of his family, friends or neighbors—born or schooled here—may provide aid. Private organizations also exist to aid immigrants. (Cf. *Guerrero v. Carleson* (1973) 9 Cal.3d 808, 813 [109 Cal.Rptr. 201, 512 P.2d 833].) When counsel does not speak the litigant's language, he too may secure aid from such persons and organizations to communicate with his client. Courtroom proceedings, of course, are controlled by counsel, and the absence of an interpreter for his client to explain court proceedings as they occur has not been shown to constitute a substantial burden.

Appellant questions the competence of family members and friends to interpret complex legal proceedings. However, court certified interpreters are certainly not lawyers and even if appointed, the complexities will remain. In any event it is counsel—not his client—who controls the litigation and must understand the proceedings at trial.

Appellant relies upon *Gardiana v. Small Claims Court* (1976) 59 Cal.App.3d 412 [130 Cal.Rptr. 675] holding that in small claims court volunteer interpreters should be appointed when one of the parties does not speak English, and if volunteers are unavailable, an interpreter should be appointed and compensated at public expense. In support of the latter conclusion the court reasoned that Evidence Code section 752 requires appointment of an interpreter when a witness does not speak or understand English, that courts have an inherent power to appoint interpreters when necessary to the administration of justice, and that refusal to appoint an interpreter—as a practical matter —would restrict an indigent's access to the courts.

The court's reasoning must be viewed in light of the nature of a small claims court, and when this is done the case is clearly distinguishable. That court functions informally and expeditiously. There exist no attorneys, no pleadings, and no specific rules of evidence. The awards, while made in accordance with substantive law, result from common sense. The spirit of compromise and conciliation attends the proceedings, requiring participant comprehension. (*Id.*, at pp. 417-418; *Sanderson v. Niemann* (1941) 17 Cal.2d 563, 573-574 [110 P.2d 1025].) The parties are usually their own witnesses and frequently the only ones. It is apparent that unless the non-English speaking party



has an interpreter he is effectively barred from access to the small claims proceeding. By way of contrast, appellant possesses an attorney capable of fully representing him in the municipal court proceeding.

Because language assistance to indigent but represented litigants appears available, we are satisfied there is no need for courts to require appointment of interpreters at public expense to assist litigants.

CONSTITUTIONAL BASIS FOR APPOINTMENT

Appellant contends that refusal to appoint an interpreter denies him an opportunity to be heard, depriving him of access to the courts in violation of the constitutional guarantees of both due process and equal protection of the law. There has been no showing as to whether non-English speaking litigants, able to afford paid interpreters, are likely to secure them for consulting with counsel and translating legal proceedings.

Absent "countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard." (*Boddie v. Connecticut* (1971) 401 U.S. 371, 377 [28 L.Ed.2d 113, 118, 91 S.Ct. 780]; *Payne v. Superior Court, supra,* 17 Cal.3d 908, 914.) In *Boddie,* it was held that indigents could not be forced to pay a filing fee in order to dissolve their marriage. Subsequent cases limit *Boddie,* holding indigents may be required to pay the filing fee for such relief as discharge in bankruptcy or review of an agency determination resulting in lower welfare payments. (*United States v. Kras* (1973) 409 U.S. 434 [34 L.Ed.2d 626, 93 S.Ct. 631]; *Ortwein v. Schwab* (1973) 410 U.S. 656 [35 L.Ed.2d 572, 93 S.Ct. 1172].)

One of the basis for distinguishing *Boddie*, recognized in *Payne v. Superior Court, supra,* 17 Cal.3d 908, 916-917, is that the indigent had alternative means to secure the relief sought—means other than resort to the trial court itself for aid. (*United States v. Kras, supra,* 409 U.S. at p. 445 [34 L.Ed.2d at pp. 635-636]; *Ortwein v. Schwab, supra,* 410 U.S. at pp. 659-660 [35 L.Ed.2d at pp. 575-576].)

As pointed out above, the non-English speaking litigant ordinarily has alternative sources for language assistance to communicate with counsel and other community professionals and officials. The court proceedings being controlled by counsel, we further suggest that appellant is in no worse position than the numerous represented litigants who elect not to be present in court at all.

The Constitution mandates expense-paid court access in limited cases. Petitioner has not shown his access to be constitutionally impaired.

The judgment is affirmed.

Mosk, J., Richardson, J., and Manuel, J. concurred.



TOBRINER, J.—I dissent.

Appellant Aurelio Jara has been sued in municipal court for damages arising out of an automobile accident. He attests that he is indigent and that he can neither speak nor understand the English language. In California, all courtroom proceedings are conducted in English. (Code Civ. Proc., § 185.) Consequently, Jara requested that the court appoint an interpreter at county expense in order to translate the proceedings for him at trial. The court, concluding that it lacked both inherent and statutory power to appoint an interpreter for this purpose, denied his motion.

As I shall explain, I believe that the municipal court erred in concluding that it lacked the authority, under any circumstances, to appoint an interpreter to assist a defendant in a civil case. In my view, a trial court clearly has the inherent authority to provide an interpreter for an indigent defendant in a civil action if the defendant lacks alternative means by which to obtain a translation of the proceedings against him. Indeed, I believe that in such circumstances fundamental considerations of due process require it to do so.

Therefore, I would remand the matter to the municipal court for it to determine whether appellant requires the appointment of an interpreter so that he may meaningfully participate in the proceedings, or whether he has alternative means by which to obtain a reasonable translation of the proceedings. I believe the majority err in precluding, in all circumstances, the trial court from exercising such inherent authority and discretion.

At issue here is the question whether our judicial system will allow an indigent defendant in a civil

case who does not speak nor understand the English language to be deprived of his interest in his property (including future earnings), which he may desperately need in order to survive, in a proceeding that he does not, and, because of his indigency, cannot hope to understand. I believe this issue raises basic constitutional and human questions that the majority does not begin to confront.

The majority claims that an interpreter for a party would perform a "burdensome function," in excess of that authorized under Evidence Code section 752, by being required to interpret communications between the litigant and his counsel, all oral proceedings at trial including testimony by English speaking witnesses, and communications of attorneys, judge, and jurors. This description, however, only illuminates the crucial purpose served by an interpreter for a non-English speaking party. Yet the majority would preclude the indigent defendant from any access to or participation in this communication, and thus insure that for him the proceeding will be an empty and meaningless ritual.

The majority argues that the absence of a court-appointed interpreter in such circumstances works no deprivation of due process, because alternative sources of assistance are ostensibly available to the litigant and his attorney: "Members of his family, friends or neighbors—born or schooled here—may provide aid. Private organizations also exist to aid immigrants. . . . When counsel does not speak the litigant's language, he too may secure aid. . . ." (P. 184, *ante,*) While these alternatives in any given circumstance may be able to provide assistance to a defendant, they may, just as likely, not be available. Family members, friends and neighbors may not be bilingual, or the necessity



of their continuous presence in court may be unduly burdensome. Further, contrary to the majority's rather cavailier assumption, significant numbers of minority groups whose principal language is not English were neither born nor schooled here, and the defendant may not be able, therefore, to obtain assistance from his community.

In addition, in California, as in our nation as a whole, those people whose principal or sole language is not English are, unfortunately, most often part of educationally and economically deprived subgroups, and may be the persons least likely to be able to provide for the defendant a competent and coherent translation of sophisticated court proceedings. Therefore, whether in a given case the defendant has access to effective, alternative resources or whether he requires the assistance of a court-appointed interpreter at the expense of the county must lie within the sound determination and discretion of the court.

The majority argues that the absence of an interpreter for the non-English speaking defendant has not been shown to constitute a "substantial burden." I cannot agree with the majority's assessment of the confusion, the despair, and the cynicism suffered by those who in intellectual isolation must stand by as their possessions and dignity are stripped from them by a Kafkaesque ritual deemed by the majority to constitute, nonetheless, a fair trial.

We said in *Sokol v. Public Utilities Commission* (1966) 65 Cal.2d 247, 254 [53 Cal.Rptr. 673, 418 P.2d 265], "What is due process depends on the circumstances. It varies with the subject matter and the necessities of the situation. [Citation.] Its content is a function

of many variables, including the nature of the right affected, the degree of danger caused by the proscribed condition or activity, and the availability of prompt remedial measures." Thus, in analyzing the requirements of due process in the instant case, we must draw our guidance from those "fundamental principles of liberty and justice that lie at the base of all our civil and political institutions." (*Palko v. Connecticut* (1937) 302 U.S. 319, 328 [82 L.Ed. 288, 293, 58 S.Ct. 149].)

First, central in our understanding lies the principle that in a healthy and coherent society a person may be condemned, or liability imposed, only after a fair hearing, one that is neither a pretense nor a sham (*id.*, at p. 327 [82 L.Ed. at p. 293]) and one that is appropriate to the nature of the case. (*Mullane v. Central Hanover Bank & Tr. Co.* (1950) 339 U.S. 306, 313 [94 L.Ed. 865 872-873, 70 S.Ct. 652].) "[A]bsent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a *meaningful* opportunity to be heard." (Italics added.) (*Boddie v. Connecticut* (1971) 401 U.S. 371, 377 [28 L.Ed.2d 113, 118, 91 S.Ct. 780].)

This court observed little more than a year ago that "[f]ew liberties in American have been more zealously guarded than the right to protect one's property in a court of law. This nation has long realized that none of our freedoms would be secure if any person could be deprived of this possession without an opportunity to defend them ' "at a meaningful time and in a meaningful manner." ' [citation]. In a variety of contexts, the right of access to the courts has been reaffirmed and strengthened throughout our 200-year



history." (*Payne v. Superior Court* (1976) 17 Cal.3d 908, 911 [132 Cal.Rptr. 405, 553 P.2d 565].) "Without such a 'legal system,' social organization and cohesion are virtually impossible; with the ability to seek regularized resolution of conflicts individuals are capable of independent action that enables them to strive for achievements without the anxieties that would beset them in a disorganized society." (*Boddie v. Connecticut, supra,* 401 U.S. 371, 374 [28 L.Ed.2d 113, 117].)

Furthermore, for much of our nation's history many cultural and ethnic minorities have found themselves excluded from the benefits and privileges of full membership in our society. For many of these people who speak a language other than English the key to their experience of separation has been a virtually insurmountable inability to communicate with either individuals outside of their own culture or the institutions of our system of government. (See *Guerrero v. Carleson* (1973) 9 Cal.3d 808, 817-818 [109 Cal. Rptr. 201, 512 P.2d 833] (Tobriner, J., dis.).) In particular, as the English language is the principle medium of communication in any court proceeding, a person's ability to use and understand the language is critical to the fundamental fairness of the proceedings. (See Chang & Araujo, *Interpreters for the Defense: Due Process for the Non-English-Speaking Defendant* (1975) 63 Cal.L.Rev. 801.) In *Castro v. State of California* (1970) 2 Cal.3d 223, 242 [85 Cal.Rptr. 20, 466 P.2d 244] this court removed one fundamental barrier to full participation in our society by striking down as unconstitutional under the Fourteenth Amendment our state Constitution's requirement of literacy in the English language as a condition upon the right

to vote of Spanish speaking citizens. Nonetheless, the majority would today bar these same people from their fundamental right to a fair and meaningful hearing in our courts of law.

These considerations assume an even greater importance when they involve as they do here, the indigent *defendant* in a civil action. We recognized in *Payne* that the defense of one's property interests in a civil action constitutes a fundamental right which "equals in constitutional significance the right to dissolve a marriage that was protected in *Boddie*." (*Payne v. Superior Court, supra,* 17 Cal.3d 908, 916.) Furthermore, a defendant is drawn involuntarily into the judicial system. He becomes thereby subject to its immense powers, and the judicial proceeding becomes his only means of protecting his interests. Consequently, the denial of the defendant's full access to the court process "raises grave problems for its legitimacy." (*Boddie v. Connecticut, supra,* 401 U.S. 371, 376 [28 L.Ed.2d 113, 118].)

The question of the right of a defendant to an interpreter has arisen most often in the context of criminal proceedings. In that context, courts have generally recognized that if the criminal defendant is so unfamiliar with the English language that he cannot either communicate his testimony, or understand those of others involved in the proceedings, he is entitled as a matter of constitutional right to be furnished with the assistance of an interpreter. Although the courts have posited this right in part on the basis of the defendant's rights of confrontation and to the effective assistance of counsel in a criminal action, they have made clear that its basic source and nature runs deeper.



In *In re Muraviov* (1961) 192 Cal.App.2d 604 [13 Cal.Rptr. 466], for example, the court reversed the defendant's conviction on due process grounds, holding: "There can be no doubt that due process of law and a defendant's constitutional rights are violated where [his] ignorance or inability to intelligently understand his legal and constitutional rights render it impossible for him to understand the nature of the proceedings being taken against him . . . ." (*Id.,* at p. 606.) In *People v. Annett* (1967) 251 Cal.App.2d 858 [59 Cal.Rptr. 888], the court also based the non-English-speaking accused's right to the assistance of an interpreter on due process grounds. "[The f]ailure of a trial court to appoint an interpreter for a defendant who has requested one, or whose conduct has made it obvious to the court that he is unable because of linguistic difficulties knowingly to participate . . . is 'fundamentally unfair' . . . ." (*Id.,* at pp. 861-862.)

In the leading case of *United States ex rel. Negron v. State of New York* (2d Cir. 1970) 434 F.2d 386 the defendant, a 23-year-old Puerto Rican, faced a charge of murder. He could neither speak nor understand English. Neither his attorney nor the judge could speak Spanish. Twelve of the fourteen witnesses testified in English. In reversing his conviction the court held that the right denied to the defendant was more consequential than the right to confrontation. Rather, it involved "[c]onsiderations of fairness, the integrity of the fact-finding process, and the potency of our adversary system of justice . . . ." (*Id.,* at p. 389.) "[A]s a matter of simple humaneness, Negron deserved more than to sit in total incomprehension as the trial proceeded. Particularly inappropriate in this nation where many

languages are spoken is a callousness to the crippling language handicap of a newcomer to its shores . . . ." (*Id.*, at p. 390; see also *United States v. Carrion* (1st Cir. 1973) 488 F.2d 12, cert. den. (1974) 416 U.S. 907 [40 L.Ed.2d 112, 94 S.Ct. 1613]; *United States v. Desist* (2d Cir. 1967) 384 F.2d 889; *United States ex rel. Navarro v. Johnson* (E.D.Pa. 1973) 365 F.Supp. 676.)

Fully in consort with the considerations involved in these criminal proceedings, in *Gardiana v. Small Claims Court* (1976) 59 Cal.App.3d 412 [130 Cal. Rptr. 675] the court expressly held for the first time that an indigent, non-English speaking litigant in a civil small claims proceeding was entitled to be furnished with a court-appointed interpreter at county expense if no competent volunteer interpreters were available. Recognizing the fundamental importance of the use of language in the small claims proceeding, the court reasoned that its statutory duty to appoint an interpreter when the prescribed circumstances so required (see Evid. Code, § 752) and its inherent power to appoint an interpreter whenever justice so required, compelled its conclusion that it was required to appoint an interpreter free of charge to translate the proceedings for an indigent, civil litigant.[1] (*Id.*, at pp. 423-424.)

We have long recognized that a court, as a part of one of the three branches of government established by the Constitution "has within it the inherent power

[1]Although the special nature of an action in small claims court justified the court's extension of the right to a court-appointed interpreter to an indigent plaintiff (see *Sanderson v. Niemann* (1941) 17 Cal.2d 563, 574-574 [110 P.2d 1025]), we do not reach this question here.



of self-preservation," that is, the power to effect its efficient administration and to prevent impairment of its constitutional functions. (*Millholen v. Riley* (1930) 211 Cal. 29, 33-34 [293 P. 69].) The majority argues that a court is limited to its statutory authorization, pursuant to Evidence Code section 752,[2] to appoint an interpreter for a witness who cannot sufficiently understand, or express himself in the English language. While the Legislature has provided by statute only for the appointment of an interpreter for a witness, we have not heretofore concluded that the Legislature therefore intended to limit the inherent power of the court to provide an interpreter in other circumstances when the administration of justice so demanded.

The very limited nature of the statutory provisions indicates that they were not designed to provide an exclusive basis for the exercise of the court's power. (See *Green v. Superior Court* (1974) 10 Cal.3d 616, 630-631 [111 Cal.Rptr. 704, 517 P.2d 1168].) In any case, as I have concluded that an indigent civil defendant possesses a constitutionally protected right to a court-appointed interpreter if no other means of assistance are available a court necessarily has the inherent power to render the constitutional right effective, and the Legislature could not properly derogate this power. (*Byers v. Smith* (1935) 4 Cal.2d 209, 214 [47 P.2d 705].)

[2]Evidence Code section 752 provides: "(a) When a witness is incapable of hearing or understanding the English language or is incapable of expressing himself in the English language so as to be understood directly by counsel, court, and jury, an interpreter whom he can understand and who can understand him shall be sworn to interpret for him. (b) The interpreter may be appointed and compensated as provided in Article 2 (commencing with section 730) of Chapter 3."

Moreover, courts have traditionally viewed the inherent power to appoint an interpreter as supplemental to, and more extensive than, the statutory provisions. ". . . [I]t is undoubtedly the rule not only that courts of general jurisdiction have inherent power to swear interpreters whenever such a course is necessary to the due administration of justice [citations], but that the power may be exercised to supplement existing statutes the provisions of which do not extend to all cases in which such a necessity appears [citations]." (*People v. Walker* (1924) 69 Cal.App. 475, 486 [231 P. 572].) "In every court there also rests the inherent power to call interpreters for witnesses under proper circumstances [citation]; and it is, of course, the duty of a court to call an interpreter whenever such circumstances arise." (*People v. Holtzclaw* (1926) 76 Cal. App. 168, 171 [243 P. 894].) "At common law the court has not only the right, but also the duty, to make such appointment where the necessity exists. [Citation.] . . . [T]he duty to appoint as occasion requires remains irrespective of statute. A poor litigant as well as a rich one is entitled to his day in court, and to a respectful hearing; and, insofar as he cannot present his case except through an interpreter, it is right to be heard in that way." (*Mennella v. Metropolitan St. Ry. Co.* (1904) 43 Misc. 5 [86 N.Y.S. 930, 931]; see also *Wise v. Short* (1921) 181 N.C. 320 [107 S.E. 134, 136].)

Although the majority raises the question of the power of a court to approve the payment of third party fees with county funds in the absence of the express authorization of the Legislature, that specific issue is not presented here. This court has often affirmed a court's inherent power to waive its own fees and costs



(*Martin v. Superior Court* (1917) 176 Cal. 289, 299 [168 P. 135]; *Earls v. Superior Court* (1971) 6 Cal.3d 109, 113 [98 Cal.Rptr. 302, 490 P.2d 814]; *Ferguson v. Keays* (1971) 4 Cal.3d 649, 652 [94 Cal.Rptr. 398, 484 P.2d 70]; *Isrin v. Superior Court* (1965) 63 Cal.2d 153, 165 [45 Cal.Rptr. 320, 403 P.2d 728]), and, in the absence of a legislative enactment to the contrary, properly to apply funds appropriated to the court to any legitimate purpose of the court. (*Millholen v. Riley, supra,* 211 Cal. 29, 31.)

Interpreters' fees are treated by statute as "costs" which may be fixed as the court deems "reasonable" and which may be "apportioned and charged to the several parties in such proportion as the court may determine . . . ." (Evid. Code, §§ 752, subd. (b), 730, 731, subd. (c).) Similarly, the fees of interpreters employed by the county and assigned to participate in a civil proceeding (Gov. Code, § 26806, subd. (c)) are assessed against the litigants "in such proportions as the court may direct" and are "taxed and collected as other costs." (Gov. Code, § 68092, subd. (b).) Thus, the power of the trial court to waive the collection of an interpreter's fees where a party to an action is indigent and is proceeding in forma pauperis is also implicit in its statutory power to tax and collect the fees as costs. Any contrary conclusion would have the "practical effect of restricting an indigent's access to the courts because of his poverty, . . . [and would contravene] the fundamental notions of equality and fairness which since the earliest days of the common law have found expression in the right to proceed in forma pauperis." (*Isrin v. Superior Court, supra,* 63 Cal.2d 153, 165.)

Only a generation ago, in *Griffin v. Illinois* (1956) 351 U.S. 12, 19 [100 L.Ed. 891, 899, 76 S.Ct. 585, 55 A.L.R.2d 1055], our high court unequivocably declared that "[t]here can be no equal justice when the kind of trial a man gets depends on the amount of money he has." Even in a civil case, the "fair and meaningful hearing" guaranteed to all persons by due process of law requires more than merely the physical presence of the defendant, particularly when because of his indigency he lacks the means to understand the very language in which the proceedings are conducted.

In *Castro v. State of California, supra,* 2 Cal.3d 223, we refused to allow a person's language, and his inability to understand English, to preclude him from exercising his fundamental right to vote. It is indeed anomalous that, by today's decision, an heir to the same "great and gracious culture,identified with the birth of California," (*id.*, at p. 243) is effectively denied the equally fundamental right to a fair and meaningful hearing in which to defend his interests.

For these reasons I would reverse and remand the case to the municipal court with directions to determine, under the facts of the present case, whether a court-appointed interpreter should be provided to appellant.

Bird, C. J., and Newman, J., concurred.



## APPENDIX B.

[Civ. No. 49245. Second Dist., Div. Four. Mar. 30, 1977.]

Aurelio Fregoso Jara, Plaintiff and Appellant, v. The Municipal Court for the San Antonio Judicial District of Los Angeles County, Defendant and Respondent; County of Los Angeles et al., Real Parties in Interest and Respondents.

COUNSEL

Dawn Scott for Plaintiff and Appellant.

John H. Larson, County Counsel, David B. Kelsey and Jeffrey M. Hausman, Deputy County Counsel, for Defendant and Respondent and for Defendants and Real Parties in Interest.

OPINION

JEFFERSON (Bernard), J.—On February 14, 1974, one LeRoy Bell filed an action against petitioner Aurelio Fregoso Jara in the Municipal Court of San Antonio Judicial District. Bell sought damages in the sum of $1,277.09 for property damages arising out of an automobile accident occurring on January 16, 1973. Jara filed an answer and cross-complaint to the Bell action.

In the municipal court, Jara filed a motion requesting the court to appoint, without expense to him, for the upcoming trial, an interpreter who was skilled in Spanish and English. Jara set forth in his motion that he was unable either to speak or understand English, that he was indigent and unable to bear the expense of an interpreter. The municipal court denied Jara's motion on the ground that the court

had no inherent or statutory power to appoint an interpreter at the expense of Los Angeles County.

Thereafter, petitioner Jara filed in the Los Angeles County Superior Court a petition for a writ of mandamus to compel the municipal court to provide the requested interpreter. The alternative writ was issued by the superior court and respondent municipal court filed a return and answer. After a hearing, the superior court denied the petition, made findings of fact and conclusions of law, and entered a judgment denying relief to petitioner Jara. Petitioner Jara has appealed from this judgment. As a part of its findings of fact and conclusions of law, the superior court found and concluded that petitioner had made an adequate showing of indigency.

On this appeal petitioner Jara makes the following contentions: (1) that a trial court is compelled, by statutory and decisional law, to appoint an interpreter for a civil-case litigant who does not speak or understand English; (2) that the constitutional requirements of due process of law and equal protection of the laws mandate the appointment of an interpreter for a litigant in a civil case who does not speak or understand the English language; and (3) that it was an abuse of discretion for the trial court to refuse to appoint an interpreter for petitioner at county expense.

In opposing the contentions of petitioner Jara, respondent Municipal Court of San Antonio Judicial District, and the County of Los Angeles, which, along with Bell, is a real party in interest, do not take issue with the superior court's finding of indigency as to petitioner, defendant in the municipal court action.



Although petitioner has posed the issue raised—as the right of a *civil litigant* who does not understand English—to the appointment of an interpreter, the litigant involved in the case at bench is a *defendant* in a civil action. Accordingly, we limit our consideration to the rights of a civil-action *defendant—not* the rights of a *plaintiff* civil-action litigant.

## I

## Does California Statutory and Decisional Law Mandate the Appointment of an Interpreter, at Public Expense, for an Indigent Defendant in a Civil Action Who Does Not Understand or Speak English?

One contention of petitioner Jara is that the trial court is mandated by California statutory and decisional law to appoint an interpreter, at public expense, for an indigent civil-litigant defendant who does not understand or speak English. Reliance for this contention is placed on cases such as *Hilbert v. Kundicoff* (1928) 204 Cal. 485 [268 P. 905] and *People v. Walker* (1924) 69 Cal.App. 475 [231 P. 572]. Both *Hilbert* and *Walker* dealt with section 1884 of the Code of Civil Procedure, which provided that "[w]hen a *witness* does not understand and speak the English language, an interpreter must be sworn to interpret for him." (Italics added.) *Walker* points out that "[t]his enactment, however, is not exclusive, as it is undoubtedly the rule not only that courts of general jurisdiction have inherent power to swear interpreters whenever such a course is necessary to the due administration of justice [citations], but that the power may be exercised to supplement existing statutes the provisions of which do not extend to all cases in which such a necessity appears [citations]." (*Walker, supra,* 69 Cal.App. 475, at p. 486.)

Code of Civil Procedure section 1884 has been superseded by Evidence Code section 752. Subdivision (a) of section 752 provides: "When a *witness* is incapable of hearing or understanding the English language or is incapable of expressing himself in the English language so as to be understood directly by counsel, court, and jury, an interpreter whom he can understand and who can understand him *shall* be sworn to interpret for him." (Italics added.)

Both former section 1884 of the Code of Civil Procedure and present section 752, subdivision (a), of the Evidence Code, relate to the appointment of an interpreter for a *witness* who does not speak or understand English. There is no present statute which specifically requires the appointment of an interpreter for a *civil litigant*—plaintiff or defendant—who does not speak or understand the English language.

Petitioner, however, calls our attention to judicial decisions which relate to the financial problems of civil litigants as distinguished from the subject matter of witnesses who have a need for interpreters. *Ferguson v. Keays* (1971) 4 Cal.3d 649 [94 Cal.Rptr. 398, 484 P.2d 70], is one of these cases. *Ferguson,* however, is very limited in its actual holding. The holding of *Ferguson* is limited to the principle that an appellate court has an inherent power to waive the requirement of filing fees to accommodate indigent civil litigants. *Ferguson* states that such power "may be exercised *in the absence of statutory provisions to the contrary,* . . ." (*Ferguson, supra,* 4 Cal.3d 649, at p. 654.) (Italics added.) The *Ferguson* court points out that it does not deal with the question of "whether indigents must be given funds by the county or some other



source in order to pay transcript fees, publication costs, or other similar third-party charges." (*Id.,* at p. 654.)

In spite of its limited holding, *Ferguson* is nevertheless significant in that it points out that the question of *third-person* charges was involved in the underlying cases which led to the writ of mandate matter presented to the *Ferguson* court. One of the underlying cases in *Ferguson* sought payment from the county of fees for publishing summons in the petitioner's action for marital dissolution. In one of the other underlying cases, the petitioner sought payment for a transcript of trial proceedings for use on appeal. The trial court proceedings had led to an order denying modification of child support payments.

In view of the fact that the only question presented in *Ferguson* related to the inherent power of an appellate court to waive its filing fees, the *Ferguson* court stated that it was *not* reaching the question of whether constitutional principles of due process or equal protection would invalidate general fee legislation having the effect of depriving indigents in ordinary civil cases of access to the courts.

In *Isrin v. Superior Court* (1965) 63 Cal.2d 153 [45 Cal.Rptr. 320, 403 P.2d 728], also relied upon by petitioner, the issue presented was whether an indigent plaintiff in a civil action should be denied the right to proceed in forma pauperis on the sole ground that such plaintiff had an attorney who was acting under a contingency fee contract. An earlier case, *Gomez v. Superior Court* (1933) 134 Cal.App. 19 [24 P.2d 856], had held that an attorney's contingent interest in the litigation was sufficient to bar his client from *suing* in forma pauperis. The *Isrin* court

disapproved of *Gomez* and held that the right to proceed in forma pauperis in appropriate cases may not be denied on the ground that counsel for the indigent litigation is representing him pursuant to a contingent fee contract. The *Isrin* court stressed the fact that the natural consequence of the *Gomez* rule would be that an indigent litigant, with an uncertain claim, might be required to proceed without counsel and, in such a case, might simply fail to assert through the courts valid rights that he possessed. The *Isrin* court concluded with this cogent statement: "To the extent that *Gomez* thus has the practical effect of restricting an indigent's access to the courts because of his poverty, it *contravenes the fundamental notions of equality and fairness* which since the earliest days of the common law have found expression in the right to proceed in forma pauperis. [Citation.]" (*Isrin, supra,* 63 Cal.2d 153, at p. 165.) (Italics added.)

Respondent municipal court and real party in interest County of Los Angeles point out that the holding in *Hunt v. Hackett* (1973) 36 Cal.App.3d 134 [111 Cal.Rptr. 456] leads to the conclusion that the County of Los Angeles is under no statutory duty to assume the cost of an interpreter in a civil action irrespective of the indigency of the litigant. The *Hunt* case does stand for the principle that there is no common law authority in California that sanctions the appointment of *counsel* for an indigent in a civil case. *Hunt* points out that *Martin v. Superior Court* (1917) 176 Cal. 289 [168 P. 135], had held that courts have an inherent power, derived from the common law, to allow indigents access to the courts in forma pauperis. But *Hunt* then states that "[i]t appears that the right



of access to the courts, which is affored to indigents by the common law, has not been extended to include any right to court-appointed counsel." (*Hunt, supra,* 36 Cal.App.3d 134, at p. 137.)

The *Hunt* court was presented with a situation not presented in *Ferguson,* to wit, the right of indigents to receive funds from the county to pay *third-person charges* involved in a civil action. *Hunt* is a direct holding, therefore, that there is no inherent common law power in the courts to authorize payment from county funds for a third-person charge to a civil litigant in the form of compensation for counsel to be appointed by the court.

Petitioner Jara, respondent municipal court and real party in interest County of Los Angeles, each considers that the case of *Gardiana v. Small Claims Court* (1976) 59 Cal.App.3d 412 [130 Cal.Rptr. 675], supports their respective positions. Petitioner Jara cites *Gardiana* as authority for his position that an indigent civil-litigant defendant who does not speak or understand English has the right to an interpreter to be paid from county funds. Respondent municipal court and real party in interest County of Los Angeles point out that, prior to *Gardiana,* no court in California had ever decided that an indigent party to a civil action who did not understand the English language, had a right to an interpreter to be paid from county funds. Respondent municipal court and real party in interest County of Los Angeles urge that *Gardiana* is unsupported by prior Supreme Court decisions and appears to be an anomaly in a long line of California decisions that have held that indigent parties to a civil action are not entitled to free services in the form of third-person charges.

*Gardiana* dealt with the question of the right to an interpreter at public expense in the case of an indigent defendant in a small claims action where such defendant does not understand or speak English. One holding of the *Gardiana* court was that the small claims court had a right to provide interpreters for indigent small claim litigants by formally or informally securing the *voluntary* services of a private citizen, or a court officer, or a government employee—persons other than a person specifically employed as an interpreter under the provisions of Government Code section 26806. In so holding, it was stated that "where the court is able to obtain the services of qualified interpreters who are willing to donate their services to the court, the use of such persons in small claims proceedings would be entirely in keeping with the purpose and functioning of the small claims court." (*Gardiana, supra,* 59 Cal.App.3d 412, at p. 420.)

*Gardiana* also holds that a small claims court has the inherent power to appoint an interpreter, at county expense, for litigants who do not speak or understand English. For this holding, *Gardiana* relies in part upon the principle that "[i]ndependently of statute, every court has the inherent power to swear interpreters whenever such a course is necessary to the due administration of justice.' " (*Gardiana, supra,* 59 Cal.App.3d 412, at p. 423.) *Gardiana* cites for this principle of law the cases of *Walker* and *Hilbert, supra. Gardiana* also relies for its position on the statutory authority embodied in Evidence Code section 752, relating to the subject of interpreters for *witnesses.*

Although Evidence Code section 752, subdivision (a), does not provide for any method of compensation for the mandatory requirement of an interpreter for



a witness who does not speak or understand English, the *Gardiana* court refers to the fact that subdivision (b) of section 752 provides that an interpreter *may* be appointed and compensated as are court-appointed expert witnesses, provided for in Evidence Code section 730 and 731. *Gardiana* interprets section 752, subdivision (b), as *not* mandating any particular method of compensation in view of the use of the discretionary term "may" as contrasted with the mandatory term "shall" used in Evidence Code section 752, subdivision (a). In light of the inherent power of the court to appoint interpreters and the statutory provisions of Evidence Code section 752, subdivision (a), mandating the same requirements, *Gardiana* concluded that "[i]t follows that in the absence of any legislative directive to the contrary, the court has the power to order that the interpreter be paid with public funds." (*Gardiana, supra,* 59 Cal.App.3d 412, at p. 424; accord, *Millholen v. Riley* (1930) 211 Cal. 29, 31 [293 P. 69].)

The *Gardiana* court distinguished the *Hunt* case by stating that "[a]lthough a court does not have the duty to appoint *counsel* for indigent civil litigants, it does have the duty to appoint an *interpreter* whenever it determines that one is necessary regardless of indigency." (*Gardiana, supra,* 59 Cal.App.3d 412, at p. 425.) (Italics added.)

There are several distinctions between the situation presented in *Gardiana* and that presented in the case before us. First, the *Gardiana* case did *not* rest its decision upon any constitutional grounds of due process of law or equal protection of the laws. Second, in relying upon the statutory grounds embodied in Evidence Code section 752, subdivision (a), *Gardiana*

did not seek to distinguish between an interpreter being appointed for *a witness* as contrasted with an interpreter being appointed for a *party defendant*. There is a clear distinction between the two concepts. Appointment of an interpreter for a party defendant would have the consequence that the interpreter would interpret for such litigant all oral proceedings of the trial, including the language spoken by English-speaking witnesses, attorneys, the trial judge, jurors, and oral communication between defendant and his attorney. This distinction, however, was not required in *Gardiana* since it dealt with a small claims proceeding where no attorneys are permitted and where litigants are appearing generally in the capacity of both witnesses and their own counsel, except insofar as the trial judge spoke and understood English only.

But since *Gardiana* did not draw a distinction between an interpreter for a party defendant and an interpreter for a witness, it cannot be claimed that *Gardiana* represents a holding that, in a civil action other than a small claims action, an indigent party defendant who does not speak or understand the English language is entitled, at public expense, to have an interpreter who would interpret all of the oral proceedings involved in the litigation even though, as in the case before us, the litigant is also represented by counsel. Nevertheless, the result reached in *Gardiana* is sound, although Evidence Code section 752, subdivision (a), is expressly made applicable *only* to the *witness* in civil litigation who is unable to speak or understand English.

Insofar as a party defendant is concerned, the *Gardiana* result can be justified upon the theory that the trial court, apart from statutory authorization, has



an inherent power to appoint an interpreter for an indigent party defendant, as distinguished from witnesses, in a small claims proceeding because "such a course is necessary to the due administration of justice." (*Walker, supra,* 69 Cal.App. 475, at p. 486.)

(1) Respondent municipal court and real party in interest County of Los Angeles assert that there is no statutory authorization for the County of Los Angeles to assume the cost of an interpreter for a witness or litigant in a civil action. Reference is made to Government Code section 26806, subdivision (c), which provides, in pertinent part, that in civil cases, an interpreter employed by the county clerk "shall collect from the litigants the fee fixed by the court and shall deposit the same in the county treasury." Government Code section 68092, subdivision (b), provides, in pertinent part, that interpreters' fees shall be paid "[i]n civil cases, *by the litigants,* in such proportions as the court may direct, to be taxed and collected as other costs." (Italics added.)

This assertion that the absence of statutory authorization precludes the payment of interpreters from county funds in civil actions is lacking in substance. The failure of the Legislature fully to implement Evidence Code section 752 in its *mandatory* requirement for the appointment of interpreters for *witnesses* who do not speak or understand English would render section 752 meaningless if the court had no power to provide for payment of an interpreter for a witness at county expense if a litigant is unable to provide payment. Since there is no legislation which specifically forbids the payment of an interpreter for a witness when a litigant is unable to do so, the view of *Gardiana* is sound that section 752 must be interpreted as au-

thorizing the court to order payment from public funds for the services of an interpreter in this situation. Also, the principle of the inherent power of the courts precludes any contrary result in the case of the need for an interpreter for a witness in a civil action in which the litigant is indigent and, therefore, cannot pay for the services of the interpreter.

II

(2) Do the Constitutional Principles of Due Process of Law and Equal Protection of the Laws Require the Appointment of an Interpreter, at Public Expense, for a Defendant in a Civil Action Who Does Not Understand or Speak English?

Petitioner Jara, although citing a number of authorities pertaining to due process-of-law and equal-protection-of-the-laws constitutional requirements, does not refer us to any case which has held that, in a *civil* action, a *defendant* who does not speak or understand English has a constitutional right under the due process and equal protection provisions of the federal and state Constitutions to have an interpreter appointed at county or other public expense, in the event of such defendant's indigency. The thrust of petitioner's contention is that, in a civil action, a *defendant* has a fundamental, substantial interest at stake in that he is subject to a financial or economic loss in terms of the creation against him of a liability that could lead to the loss of real and personal property in the event of an adverse decision; that such a litigant is entitled to an opportunity to be heard and to defend against the plaintiff's claim; and that there can be no meaningful opportunity to defend against plaintiff's claim if the defendant litigant does not speak or understand the English language and cannot, therefore, understand the proceedings against him.



Petitioner points out that section 185 of the Code of Civil Procedure requires that all judicial proceedings be conducted *solely* in English. For his constitutional contention, petitioner relies principally upon *Boddie v. Connecticut* (1971) 401 U.S. 371 [28 L.Ed.2d 113, 91 S.Ct. 780]. *Boddie* sets forth the principle "that due process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a *meaningful opportunity to be heard*. Early in our jurisprudence, this Court voiced the doctrine that '[w]herever one is assailed in his person or his property, there he may defend' [citations]. The theme that 'due process of law signifies a right to be heard in one's defense,' [citation], has continually recurred in the years. . . ." (*Boddie, supra,* 401 U.S. 371, at p. 377 [28 L.Ed.2d 113, at p. 118].) (Italics added.)

What constitutes a "meaningful opportunity to be heard"? *Boddie* expanded somewhat on this concept by stating that "[w]hat the Constitution does require is 'an *opportunity* . . . granted at a meaningful time and in a meaningful manner,' *Armstrong v. Manzo,* 380 U.S. 545, 552 (1965) (emphasis added), 'for [a] hearing appropriate to the nature of the case,' [citation]." (*Boddie, supra,* 401 U.S. 371, at p. 378 [28 L.Ed.2d 113, at p. 119].)

The holding of *Boddie* was to the effect that a state could not, without violating due process of law, preclude an indigent plaintiff from access to the courts to secure a divorce without payments of filing fees.

Since the state law involved in *Boddie* precluded a person from securing a divorce without judicial action, *Boddie* held that failure to permit an indigent plaintiff to proceed in forma pauperis to obtain a divorce, constituted a violation of the litigant's right of access to the courts. However, *Boddie* was careful to point out certain limits to its holding on the right of access to the courts as a due process requirement. Thus, it was stated: "We do not decide that access for all individuals to the courts is a right that is, in all circumstances, guaranteed by the Due Process Clause of the Fourteenth Amendment so that its exercise may not be placed beyond the reach of any individual, . . ." (*Boddie, supra,* 401 U.S. 371, at pp. 382-383 [28 L.Ed.2d 113, at p. 122].)

The *Boddie* doctrine that constitutional due process requirements, whether pertaining to the matter of access to courts or to some other matter, are dependent upon the circumstances of a particular case, is reiterated by the California Supreme Court in *Sokol v. Public Utilities Commission* (1966) 65 Cal.2d 247, 254 [53 Cal.Rptr. 673, 418 P.2d 265], in which the court stated: "What is due process depends on circumstances. It varies with the subject matter and the necessities of the situation. (Holmes, J., in *Moyer v. Peabody* (1909) 212 U.S. 78, 84 . . .) Its content is a function of many variables, including the nature of the right affected, the degree of danger caused by the proscribed condition or activity, and the availability of prompt remedial measures."

In asserting that, in a civil action, a party defendant who does not speak or understand English has no constitutional right to the services of an interpreter,



even though such party is indigent, respondent municipal court and the real party in interest, County of Los Angeles, place reliance on the California Supreme Court case of *Guerrero v. Carleson* (1973) 9 Cal.3d 808 [109 Cal.Rptr. 201, 512 P.2d 833] and the *Hunt* case, *supra, Guerrero* held that neither the due process provisions of the United States Constitution nor those of the California Constitution mandated that notice by the State Department of Social Welfare of a reduction or termination in welfare payments had to be given in the Spanish language to recipients who were literate only in Spanish. *Guerrero* points out that no prior decisional-law authority could be cited for a different result.

But *Guerrero* cannot be considered as controlling authority on the issue before us since it did not deal with the question of what constitutes a person's constitutional right of access to the courts—specifically if that person is a party defendant in a civil action and is a person who is indigent and who does not understand or speak the English language.

In *Payne v. Superior Court* (1976) 17 Cal.3d 908, 911 [132 Cal.Rptr. 405, 553 P.2d 565], it was stated: "Few liberties in America have been more zealously guarded than the right to protect one's property in a court of law. This nation has long realized that none of our freedoms would be secure if any person could be deprived of his possessions without an opportunity to defend them ' "at a meaningful time and in a meaningful manner." ' (*Fuentes v. Shevin* (1972) 407 U.S. 67, 80 [32 L.Ed.2d 556, 569-570, 92 S.Ct. 1983].) In a variety of contexts, the right of access to the courts has been reaffirmed and strengthened throughout our 200-year history."

In *Payne,* a prisoner in a state prison was the defendant in a civil action. He was indigent and initially denied the right to personally appear in the court action and the right to counsel at public expense. The *Payne* court held that the *dual* deprivation of appointed counsel and the right to personal presence in court constituted a violation of this defendant's right under the due process and equal protection clauses of both the state and federal Constitutions. *Payne* was careful to point out, however, that it was not holding that the denial of each of the rights individually is invalid. "Indeed, to grant petitioner an absolute right to both appointed counsel and personal appearance would achieve the anomalous result of according him greater privileges than those possessed by an ordinary indigent civil litigant." (*Payne, supra,* 17 Cal.3d 908, at p. 923.)

In the case at bench, we do not deal with the question of the right to appointed counsel of an indigent defendant in a civil action. Petitioner Jara is represented by counsel. Although not disagreeing with *Hunt, supra,* the *Payne* court refers to *Hunt's* explanation that a holding that indigent civil litigants do not have a right to appointed counsel produces no necessarily harsh result because of reasonable alternatives, including services provided by legal aid societies, and attorneys who undertake the ethical duty not to reject the cause of the defenseless or oppressed.

The rationale of *Payne* would seem to dictate that the state's denial to an indigent party defendant in a civil case—a defendant who does not understand or speak English—of the right to an interpreter at county expense, constitutes a due process and equal



protection violation of both the federal and California Constitutions.

It was not petitioner Jara's choice to become a party to civil litigation. Having been brought into a civil action as a defendant by plaintiff Bell, petitioner Jara seeks to protect any property he may own in the future. Any judgment against him may constitute a danger to any property he may acquire for years to come. The case at bench thus comes within the principle set forth in *Boddie,* that "absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard." (*Boddie, supra,* 401 U.S. 371, at p. 377 [28 L.Ed.2d 113, at p. 118].)

The basic issue may be said to involve the question of whether defendant Jara, represented by counsel, will be able to establish his defense without the benefit of an interpreter. The answer seems obvious. Without an interpreter, petitioner Jara as a defendant will be unable to understand any of the oral proceedings which must be conducted in English. This includes the testimony of witnesses against him, the statements of the judge, of opposing counsel and his own counsel if such counsel does not speak or understand Spanish. Any defendant in a civil action who is placed under such a handicap cannot be deemed to have been accorded a constitutional right of access to the courts. Such a denial of a "meaningful opportunity to be heard" constitutes a deprivation of property without due process of law.

Although two subsequent decisions of the United States Supreme Court have limited somewhat the scope

of *Boddie* (*United States v. Kras* (1973) 409 U.S. 434 [34 L.Ed.2d 626, 93 S.Ct. 631]; *Ortwein v. Schwab* (1973) 410 U.S. 656 [35 L.Ed.2d 572, 93 S.Ct. 1172]), they "did not alter the impact of the decision on the rights of civil defendants." (*Payne, supra,* 17 Cal.3d 908, at p. 915.)

Petitioner Jara, as an indigent defendant—who does not speak or understand English—seeking to defend a civil suit, has a due process right of access to the courts which has been abridged by the failure of the state to provide him with an interpreter while requiring that the judicial proceedings be conducted in English. Under such circumstances, "[t]he state has the burden of demonstrating a compelling state interest to justify the infringement." (*Payne, supra,* 17 Cal.3d 908, at p. 919.)

The denial to petitioner Jara, as a defendant in a civil action, of a meaningful access to the courts, also constitutes a denial of equal protection of the laws. Indigent defendants in a civil case who speak and understand English can understand the oral proceedings against them and, hence, can properly assert a defense and are not denied a *meaningful opportunity to be heard and defend,* while an indigent defendant who does not understand or speak English and is not provided with an interpreter is denied such an opportunity. "[T]o be heard in court to defend one's property is a right of fundamental constitutional dimension; in order to justify granting the right to one group while denying it to another, the state must show a compelling state interest. [Citation.]" (*Payne, supra,* 17 Cal.3d 908, at p. 919.)

In seeking to justify petitioner Jara's deprivation of a meaningful access to the courts as an indigent,



non-English-speaking defendant, respondent municipal court and real party in interest County of Los Angeles set forth several asserted compelling state interests. One such interest asserted is that of maintaining a single language system. (See *Guerrero, supra,* 9 Cal.3d 808, at p. 815); cf. *Castro v. State of California* (1970) 2 Cal.3d 223 [85 Cal.Rptr. 20, 466 P.2d 244].) Another state interest asserted is that of discouraging frivolous litigation by imposing costs on all litigants. Another state interest referred to is that of holding the maintenance of the courts within reasonable monetary limits. We find no merit in the contention that these state interests—most all of which are founded on financial or cost considerations—are of such a substantial nature to justify the denial of access to the courts in civil cases to defendants who are indigent and who do not understand or speak the English language.

The state interest in maintaining the single language system of English in court proceedings is significant and essential but this interest will not be compromised, endangered, disturbed or dented to any appreciate degree by the public expense involved in providing interpreters in civil actions to indigent defendants who do not understand or speak English. We seriously question the view that the cost of maintaining the court system will be increased to any appreciable degree if interpreters are provided at public expense in the limited situation presented in the case at bench. "In any event, the Supreme Court [of the United States] has held that financial savings cannot justify an otherwise unconstitutional state action. (*Shapiro v. Thompson* (1969) *supra,* 394 U.S. 618, 633 [22 L.Ed.2d 600, 614].)" (*Payne, supra,* 17 Cal.3d 908, at pp. 920-921.)

Finally, we point out the limits of our holding. We do not deal with the question of whether, in civil actions, indigent *plaintiffs* who do not speak or understand English have any constitutional right to an interpreter at public expense. We hold simply that, in a civil action, if the *defendant* is indigent and does not speak or understand English, and irrespective of whether he is, or is not, represented by counsel, and, if represented by counsel, irrespective of whether counsel speaks and understands English only, the due process and equal protection provisions of the federal and state Constitutions require, in order for such defendant to have a meaningful opportunity to be heard and defend, that an interpreter be appointed for him at public expense.

The judgment appealed from is reversed.

Kingsley, Acting P. J., concurred.



DUNN, J.—I dissent.

It is impossible for me to concur in the majority's discussion of the *Gardiana* case. That opinion specifically states (59 Cal.App.3d at p. 415) that plaintiffs filed a petition for a writ seeking appointment of an interpreter *for trial.*

The record does not contain any trial date notice. It seems to me that there is neither constitutional nor statutory authority to appoint an interpreter merely to assist counsel, as here, in talking to his client. Once that client gets into court and is a witness it may become another matter under *Gardiana* (although the term "witness" is not defined in the Evidence Code).

In view of the foregoing, I see no reason, under rule 976, California Rules of Court, to publish this opinion.

I would affirm the judgment.

## APPENDIX C.

### Petition for Writ of Mandate Minute Order.

Filed October 24, 1975

L. Swart, Deputy Clerk

In the Superior Couirt of the State of California, County of Los Angeles.

Aurelio Fregoso Jara, Petitioner, vs. Municipal Court of San Antonio Judicial District, Respondent. Le Roy Bell, Real Party in Interest. No. C 132 127.

In the above entitled action, ordered submitted on September 25, 1975, the Court now renders the following decision: Petition for Writ of Mandate is DENIED. Alternative writ discharged. Counsel for respondent to prepare judgment.

DATED: October 24, 1975

ARTHUR K. MARSHALL
Judge of the Superior Court



## APPENDIX D.

### Findings of Fact and Conclusions of Law.

Filed December 29, 1975

L. Swart, Deputy Clerk

In the Superior Court of the State of California, County of Los Angeles.

Aurelio Fregoso Jara, Petitioner, vs. Municipal Court of San Antonio Judicial District, Respondent. Le Roy Bell, Real Party in Interest. No. C 132 127.

This matter came on regularly for hearing on September 25, 1975 in Department 70 of the above entitled court, the Honorable Arthur K. Marshall, Judge Presiding; petitioner appeared by Dawn Scott of the Southeast Legal Aid Center and respondent appeared by John H. Larson, County Counsel by Jeffrey M. Hausman, Deputy County Counsel. The Court having read and considered the pleadings, papers, points and authorities in support thereof, and the Court having heard and considered oral argument;

The Court now makes the following findings of fact and conclusions of law:

### FINDINGS OF FACT

1. Petitioner is a defendant and cross-complainant in a certain civil action entitled *LeRoy Bell v. Aurelio Fregoso Jara*, No. 40445, in the Municipal Court, San Antonio Judicial District.

2. Petitioner had filed a motion for court appointed interpreter for an indigent defendant.

3. Said motion was opposed by the County of Los Angeles.

4. The Municipal Court, San Antonio Judicial District ruled that petitioner had no right to a court appointed interpreter in a civil case.

5. The case entitled *LeRoy Bell v. Aurelio Fregoso Jara* in the Municipal Court, San Antonio Judicial District, No. 40445, is a purely civil case.

6. The Municipal Court, San Antonio Judicial District treats all civil litigants equally in that no litigant is afforded a free court appointed interpreter.

7. Petitioner is sole support of his family of six.

8. Petitioner's net income is $530 per month.

CONCLUSIONS OF LAW

1. The lower court did not abuse its discretion in denying a court appointed interpreter in this case.

2. The lower court did not act in excess of its jurisdiction in not appointing a court appointed interpreter in this case.

3. This writ proceeding arises from a purely civil matter.

4. Petitioner has made an adequate showing of indigency.

5. Petitioner was not denied equal protection of the law.

6. Petitioner was not denied due process of law.

7. Petitioner has no common law right to a court appointed interpreter in a purely civil case.

DATED: 12-29-75.

/s/ Arthur K. Marshall
THE HONORABLE ARTHUR K.
MARSHALL JUDGE OF THE SUPERIOR
COURT



## APPENDIX E.

### Judgment.

Filed December 29, 1975
L. Swart, Deputy Clerk

In the Superior Court of the State of California, County of Los Angeles.

Aurelio Fregoso Jara, Petitioner, vs. Municipal Court of San Antonio Judicial District, Respondent. Le Roy Bell, Real Party in Interest. No. C 132 127.

The above entitled case came on regularly for hearing on September 25, 1975 in Department 70 of the above entitled court, the Honorable Arthur K. Marshall, Judge Presiding; petitioner appeared by Dawn Scott, Attorney at Law of the Southeast Legal Aid Center and respondent appeared by John H. Larson, County Counsel by Jeffrey M. Hausman, Deputy County Counsel. The Court having read and considered the pleadings, papers, points and authorities in support thereof, and heard and considered oral argument at the time of the hearing;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The petition for alternative writ of mandamus be discharged;

2. The peremptory writ of mandamus be denied;

3. The petitioner take nothing by this action against the respondent;

DATED: 12-29-75.

/s/ Arthur K. Marshall
THE HONORABLE ARTHUR K.
MARSHALL
JUDGE OF THE SUPERIOR COURT